

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

THE STATE OF TEXAS, ET AL.

v.

GOOGLE LLC

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CIVIL NO. 4:20-CV-957-SDJ

ORDER

Having received Defendant Google LLC's Answer and Affirmative Defenses to Plaintiffs' Complaint, (Dkt. #67), the Court will shortly issue an Order Governing Proceedings (OGP). However, in light of the complex nature and scope of this case, the Court considers it prudent to receive further information from the parties concerning potential deadlines that will be included in the OGP.

In addition to scheduling the Rule 16 management conference for this case, the OGP will also address deadlines for the completion of initial mandatory disclosures, as well as issues related to the parties' Rule 26(f) conference and the joint report to be submitted concerning the conference.

In regard to initial mandatory disclosures, the OGP will, among other things, require the parties to exchange the following information and materials, in addition to any other information required by Rule 26(a)(1), before the Rule 16 management conference:

- The name and, if known, the address and telephone number of persons having knowledge of facts relevant to the claim or defense of any party, a brief characterization of their connection to the case, and a fair summary of the substance of the information known by such person.
- A copy of all documents, electronically stored information (ESI), witness statements, and tangible things in the possession, custody, or control of the disclosing party that are relevant to the claim or defense of any party.

This may be combined with disclosures under Rule 26(a)(1)(A)(ii) so duplication is avoided. In cases involving a disproportionate burden of disclosure of a large number of documents on one party, the parties may agree on prior inspection to reduce the need for copies. Parties are encouraged to agree upon provision of information by electronic means. See Local Rule CV-26(d) for the meaning of “relevant to the claim or defense of any party.”

A party that fails to timely disclose the above information will not, unless such failure is harmless, be permitted to use such evidence at trial, at a hearing, or in support of a motion. A party is not excused from making its disclosures because it has not fully completed its investigation of the case.

In regard to the parties’ Rule 26(f) conference and joint report on the conference, the OGP will require the parties to address, among other items, the following issues:

- The subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on particular issues.
- Any issues relating to disclosure or discovery of ESI, including the form or forms in which it should be produced (whether native or some other reasonably usable format) as well as any methodologies for identifying or culling the relevant and discoverable ESI. Any disputes regarding ESI that counsel for the parties are unable to resolve during their conference must be identified in the report.
- Any agreements or disputes relating to asserting claims of privilege or preserving discoverable information, including ESI and any agreements reached under Federal Rule of Evidence 502 (such as the potential need for a protective order and any procedures to which the parties might agree for handling inadvertent production of privileged information and other privilege waiver issues). A party asserting that any information is confidential should immediately apply to the Court for entry of a protective order.


- Any changes that should be made in the limitations on discovery imposed by the Rules, whether federal or local, and any other limitations that should be imposed.
- Whether any other orders should be entered by the Court pursuant to Federal Rule of Civil Procedure 26(c) or Rule 16(b), (c).

At this time, the Court anticipates that the OGP will impose the following deadlines:

- Rule 26(f) attorney conference: **April 2, 2021**
- Initial mandatory disclosures: **April 23, 2021**
- Joint Rule 26(f) report: **April 27, 2021**
- Rule 16 management conference: **April 30, 2021**

The Court hereby **ORDERS** the parties to file a Joint Advisory, by no later than **March 17, 2021**, that states each party's position as to whether any case-specific adjustments should be made to the OGP's substantive requirements and/or the anticipated schedule and deadlines described herein.

So ORDERED and SIGNED this 11th day of March, 2021.


SEAN D. JORDAN
UNITED STATES DISTRICT JUDGE